

§ 4.233

particular form being within the discretion of the administrative law judge, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The administrative law judge may in any case require evidence in addition to that offered by the parties in interest.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to said will and to be in form and contents substantially as follows:

State of _____
County of _____ ss.

I, _____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the _____ day of _____, 19____, I requested _____ to prepare a will for me; that the attached will was prepared and I requested _____ and _____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

We, _____ Testator/Testatrix
_____, and _____
_____, each being first duly sworn, on oath, depose and state: That on the _____ day of _____, 19____, _____ a member of the _____ Tribe of Indians of the State of _____

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_____, published and declared the attached instrument to be his/ her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to before me this _____ day of _____, 19____, by _____ testator/testatrix, and by _____ and _____ attesting witnesses.

(Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the administrative law judge may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the administrative law judge may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing shall make their own financial and other arrangements